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9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11 **WESTERN DIVISION**

12 GOOD MORNING TO YOU)
 PRODUCTIONS CORP., *et al.*,)
 13)
 14 Plaintiffs,)
 15)
 16 v.)
 17 WARNER/CHAPPELL MUSIC,)
 INC., *et al.*)
 18)
 19 Defendants.)

Case No. CV 13-04460-GHK (MRWx)
**OBJECTIONS TO DEFENDANTS'
 REQUEST FOR JUDICIAL NOTICE**
 Date: November 16, 2015
 Time: 9:30 a.m.
 Judge: Hon. George H. King,
 Chief Judge
 Room: 650

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1 Defendants' request for Judicial Notice is entirely improper at this early
2 pleading stage. Defendants have not even cited one case where the court
3 considered granting a request for judicial notion in opposition to a motion for leave
4 to amend. All of the case law cited by Defendants involved cases at the motion to
5 dismiss stage. *See, e.g., In re Silicon Graphics Inc. Secs. Litig.*, 183 F.3d 970, 986
6 (9th Cir. 1999); *Tarantino v. Gawker Media, LLC*, No. CV 14-603-JFW FFMx,
7 2014 WL 2434647, at *1 (C.D. Cal. Apr. 22, 2014). In any event, the documents
8 cannot be judicially noticed because they have not been incorporated by reference
9 in Plaintiffs' complaint and they are not relevant.

10 **I. Documents Referenced in the Fifth Amended Complaint Are Not**
11 **Subject to Judicial Notice**

12 Defendants' Exhibits 5 and 9-11 are not subject to judicial notice because
13 they have not been incorporated by reference in Plaintiffs' complaint. A document
14 may be incorporated by reference for purposes of a motion to dismiss "where the
15 complaint necessarily relies upon a document or the contents of the document are
16 alleged in a complaint, the document's authenticity is not in question and there are
17 no disputed issues as to the document's relevance." *Coto Settlement v. Eisenberg*,
18 593 F.3d 1031, 1038 (9th Circuit 2010). The doctrine of incorporation by
19 reference may apply, for example, when a plaintiff's claim about insurance
20 coverage is based on the contents of a coverage plan, or when a plaintiff's claim
21 about stock fraud is based on the contents of SEC filings. *United States v. Ritchie*,
22 342 F.3d 903, 908 (9th Cir. 2003) (internal citations omitted). However, "the mere
23 mention of the existence of a document is insufficient to incorporate the contents
24 of a document." *Eisenberg*, 593 F.3d at 1038.

25 Here, the documents that Defendants request this court to take judicial notice
26 of are merely referenced in Plaintiffs' complaint. For example, with respect to the
27 Brauneis Article, Plaintiffs merely reference this in passing and state that he
28 reached a conclusion that Defendants did not own the copyright. It is not used to

1 show that Defendants did not actually own a copyright on the Song. The same is
2 true for the letters from Disney and Universal Studios. These merely show that
3 Defendants had knowledge of the dispute, they do not form the basis of Plaintiffs'
4 claims and are irrelevant for a ruling on this motion. Accordingly, Plaintiffs
5 objections to Exhibits 5 and 9-11 should be sustained.

6 **II. The Publications Are Not Subject to Judicial Notice Because They**
7 **Are Irrelevant**

8 Plaintiffs object to Defendants' Request for Judicial Notice of Exhibits 4 –
9 11 because those documents are irrelevant. Defendants maintain that Exhibits 4-8
10 are subject to judicial notice because they demonstrate that information regarding
11 the fact that certain people disputed Defendants' ownership of the copyright to
12 *Happy Birthday to You* was in the public realm at certain times. To the extent
13 courts can take judicial notice of press releases and news articles, it can do so only
14 to "indicate what was in the public realm at the time, not whether the contents of
15 those articles were in fact true." *Von Saher v. Norton Simon Museum of Art at*
16 *Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (citing *Premier Growth Fund v.*
17 *Alliance Capital Mgmt.*, 435 F.3d 396, 401 n.15 (3d Cir. 2001)).

18 Defendants are seeking to have this Court determine that the articles would
19 have placed Plaintiffs on notice that Defendants may not have owned a copyright
20 in *Happy Birthday* and therefore, the Court must assume that the subject of the
21 articles were, in fact, true. The Court however cannot take judicial notice of the
22 truth of the information contained in the articles. *Gerritsen v. Warner Bros. Entm't*
23 *Inc.*, Case No. CV 14-03305 MMM, 2015 U.S. Dist. LEXIS 84978 (C.D. Cal. Jan.
24 30, 2015) (court could not take judicial notice of truth of the information of the
25 various press releases). Because the Court cannot take judicial notice of the truth of
26 the information, the documents are irrelevant.

27 Moreover, as pointed out in Plaintiffs' reply brief, the Brauneis Article was
28 in fact inaccurate and was not sufficient to put anyone on notice that Defendants

1 did not own a copyright to the Song. See Reply at 6-8. Pursuant to Federal Rules
2 of Evidence 201, a court can take judicial notice of facts that are not subject to
3 dispute. Here, it is highly disputed whether this information would have put a
4 reasonable plaintiff on notice of a claim against Defendants. Further, it is highly
5 disputed whether or not this information was widely disseminated. Accordingly,
6 Plaintiffs' objection should be sustained.

7 Dated: November 12, 2015

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